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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,349	05/31/2001	Paul J. Bryan	4822-001	9565

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EXAMINER

MENDIRATTA, VISHU K

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 11/24/2004

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/871,349

Applicant(s)

BRYAN, PAUL J.

Examiner

Vishu K Mendiratta

Art Unit

3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13- 15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Claim Rejections - 35 USC § 103

1. Claims 1-5,7-11,13,15 rejected under 35 U.S.C. 103(a) as being unpatentable over Elrod (4,998,736) in view of Ex. Parte Breslow 192 USPQ 431 or In re Ngai F.3d 1336 (Fed.Cir 2004) or In re Gulack 703 F.2d 1381 (Fed.Cir. 1983).

Claims 1,7-10,11,15: Elrod teaches a game board comprising a plurality of paths (spaces 1-118) leading to a performing stage (see FINAL STAGE on Fig.1), a series of tokens for players (128), a starting point (space 1, Fig.1), at least one die (142), a supply of money (122), at least two decks of cards (124,126), a first deck of cards (124) as consequence cards having a key to path (col.9, line 55 "lose a turn"), and a second deck of cards (126) including a plurality of groups of cards (col.7, line 40 thru col.10, line 16).

Applicant may note that limitation "Band-member card group representing a band and members of band" is being interpreted as a rule for playing and does not add any weight to the apparatus as claimed.

Intended use of an apparatus does not add any limitation to the apparatus in the claim.

Accordingly the recitation of the object of the game carries little weight towards the claimed game.

The only difference between applicant's board game and the cited reference resides in meaning and information conveyed by the printed matter and not considered as patentable subject matter. The path being a network of irregular path and stage being centrally placed are aesthetic limitations and bear no criticality to playing of the game.

Art Unit: 3712

For that matter the path being zigzag or straight and the stage being placed at any location on the board would not change the functionality of the board.

In order to make the game attractive, it would have been obvious to vary aesthetics of the board by modifying the game path to any one of the zigzag, straight, and curvilinear without changing the scope and spirit of the game.

One of ordinary skill in art at the time the invention was made would have suggested modifying configuration of playing path and location of center stage for changing the aesthetics of the game and attracting players.

Claims 2-4: Elrod teaches a point (2:16-17) for purchasing music equipment.

"Designating a space as a Pawn space" is a matter of printing and does not change the functionality of the space.

Claim 5: Elrod does not teach playing pieces in shape of buses. In the art area of board games tokens are primarily used for the purpose of representation of a player's participation. The shape of a playing piece are determined to aesthetically please players and for matching the theme of the game. In order to make the game attractive it would have been obvious to use a playing piece in the shape of a bus to match the theme of the game.

One of ordinary skill in art at the time the invention was made would have suggested miniature buses as playing pieces.

Claim 13: Applicant's claim does not however provide a specific structure of a deck.

In that Elrod cards can be treated as tree decks of cards.

2. Claim 6 rejected under 35 U.S.C. 103(a) as being unpatentable over Elrod in view of Ex.Parte Breslow/ In re Ngai/ In re Gulack as applied to claim 1 above, and further in view of Hunsberger (6279908).

Claim 6: Elrod does not teach color-coding cards for distinguishing proper category. Hunsberger teaches color-coding cards (Fig.1) for distinguishing. In order to correspond a proper card, the art area of board games recognizes color-coding cards to correspond to a space on the board. Such practice is common and known in the art area. One of ordinary skill in art at the time the invention was made would have suggested using such commonly used techniques to match a card to a space.

3. Claim 14 rejected under 35 U.S.C. 103(a) as being unpatentable over Elrod in view of Ex.Parte Breslow/ In re Ngai/ In re Gulack. Elrod teaches a game board comprising a plurality of paths (spaces 1-118) leading to a performing stage (see FINAL STAGE on Fig.1), a series of tokens for players (128), a starting point (space 1, Fig.1), at least two decks of cards (124,126), a first deck of cards (124) as consequence cards having a key to path (col.9, line 55 "lose a turn"), and a second deck of cards (126) including a plurality of groups of cards (col.7, line 40 thru col.10, line 16). *With respect to path inwardly disposed and generally curved manner Elrod clearly indicates a possibility of an inner path (3:29-36).* The path shown by double arrows and worded "stage one" and "stage two" are not in the same straight line with respect to portion of path shown by double arrows and worded "stage three, four and five" and this zigzag nature of path is being interpreted as generally curved as in the claim. This path is also placed inwardly of the outside path.

Art Unit: 3712

Applicant may note that limitation "Band-member card group representing a band and members of band" is being interpreted as a rule for playing and does not add any weight to the apparatus as claimed.

Intended use of an apparatus does not add any limitation to the apparatus in the claim.

Accordingly the recitation of the object of the game carries little weight towards the claimed game.

The only difference between applicant's board game and the cited reference resides in meaning and information conveyed by the printed matter and not considered as patentable subject matter. The path being a network of irregular path and stage being centrally placed are aesthetic limitations and bear no criticality to playing of the game. For that matter the path being zigzag or straight and the stage being placed at any location on the board would not change the functionality of the board.

In order to make the game attractive, it would have been obvious to vary aesthetics of the board by modifying the game path to any one of the zigzag, straight, and curvilinear without changing the scope and spirit of the game.

One of ordinary skill in art at the time the invention was made would have suggested modifying configuration of playing path and location of center stage for changing the aesthetics of the game and attracting players.

Response to Arguments

4. Applicant's arguments with respect to claim 14 filed 5/27/03 in appeal brief have been fully considered but they are not persuasive as follows.

Art Unit: 3712

Elrod teaches a game board comprising a plurality of paths (spaces 1-118) leading to a performing stage (see FINAL STAGE on Fig.1), a series of tokens for players (128), a starting point (space 1, Fig.1), at least two decks of cards (124,126), a first deck of cards (124) as consequence cards having a key to path (col.9, line 55 "lose a turn"), and a second deck of cards (126) including a plurality of groups of cards (col.7, line 40 thru col.10, line 16). *With respect to path inwardly disposed and generally curved manner Elrod clearly indicates a possibility of an inner path (3:29-36). The path shown by double arrows and worded "stage one" and "stage two" are not in the same straight line with respect to portion of path shown by double arrows and worded "stage three, four and five" and this zigzag nature of path is being interpreted as generally curved as in the claim. This path is also placed inwardly of the outside path.*

Applicant may note that limitation "Band-member card group representing a band and members of band" is being interpreted as a rule for playing and does not add any weight to the apparatus as claimed.

Intended use of an apparatus does not add any limitation to the apparatus in the claim.

Accordingly the recitation of the object of the game carries little weight towards the claimed game.

However the path configuration and placement of center stage is a matter of aesthetics and printed matter and hence obvious in view of the printed matter doctrines as in rejection.

Art Unit: 3712

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vishu K Mendiratta whose telephone number is (703) 306-5695. The examiner can normally be reached on Mon-Fri 8AM to 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H Banks can be reached on (703) 308-1745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Vishu K Mendiratta
Primary Examiner
Art Unit 3712



VKM
September 21, 2004